

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE C. ANDERSON and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Prescott, AZ

*Docket No. 02-2019; Submitted on the Record;
Issued November 25, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's claim for reconsideration of the merits constituted an abuse of discretion.

The only decision before the Board on this appeal is the Office's June 7, 2002 decision which denied appellant's request for reconsideration of the Office's April 13, 2001 merit decision.¹ Because more than one year has elapsed between the issuance of the Office's April 13, 2001 decision and July 22, 2002, the date appellant filed his appeal with the Board, the Board lacks jurisdiction to review the April 13, 2001 decision.²

The Office's regulations pertaining to the requirements for obtaining a review of a case on its merits under 5 U.S.C. § 8128(a), state as follows:

“(b) The application for reconsideration, including all supporting documents, must:

- (1) Be submitted in writing;
- (2) Set forth arguments and contain evidence that either:
 - (i) Shows that [the Office] erroneously applied or interpreted a specific point of law;
 - (ii) Advances a relevant legal argument not previously considered by [the Office]; or

¹ The Office denied appellant's claim for an emotional condition finding that appellant failed to establish compensable factors of employment.

² See 20 C.F.R. § 501.3(d)(2).

(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office].”³

To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant must file his or her application for review within one year of the date of that decision.⁴ The Board has found that the imposition of the one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under section 8128(a) of the Federal Employees’ Compensation Act.⁵ When a claimant fails to meet one of the standards contained in section 10.606(b), the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶

In support of his March 11, 2002 reconsideration request, appellant contended that the Office did not properly recognize that he was providing a factual basis to establish that he was subjected to unfair treatment and illegal discrimination and that the Office erroneously applied or interpreted a point of law.

The Office conducted a limited review and found that they were repetitious or irrelevant. The Office found that appellant’s list of events had no dates or specifics, that no medical evidence had been submitted to establish a resultant emotional condition, that the coworker statements were vague, that no evidence or results from administrative proceedings or the Equal Employment Opportunity Commission was provided and that there was no evidence to establish that appellant was harassed, intimidated or retaliated against. The Office also noted that an in-flight aircraft accident report was irrelevant as appellant was working the ground control at that time.

The Board finds that appellant’s contentions do not constitute a basis for reopening his claim for further merit review. The Office properly denied appellant’s request for reconsideration as he failed to show an erroneous application of law or present relevant argument or evidence not previously considered.

Appellant has not established that the Office abused its discretion by denying his request for reconsideration of its April 13, 2001 decision.

³ 20 C.F.R. § 10.606 (b)(1),(2).

⁴ 20 C.F.R. § 10.607 (a).

⁵ *Diane Matchem*, 48 ECAB 532 (1997); *Jeanette Butler*, 47 ECAB 128 (1995); *Mohamed Yunis*, 46 ECAB 827 (1995); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ *See* 20 C.F.R. § 10.608(b).

The decision of the Office of Workers' Compensation Programs dated June 7, 2002 is hereby affirmed.

Dated, Washington, DC
November 25, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member